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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:)
)
Mires Tool Company, Inc.)
4330 Esthner Street)
Wichita, Kansas 67209)
)
Respondent.)
)
Proceeding under Section 3008(a) and (g) of)
the Resource Conservation and Recovery)
Act as amended, 42 U.S.C. § 6928(a) and (g))
_____)

**CONSENT AGREEMENT
AND FINAL ORDER**

Docket No. RCRA-07-2010-0017

I. PRELIMINARY STATEMENT

The United States Environmental Protection Agency (EPA), Region 7 (Complainant) and Mires Tool Company, Inc. (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules of Practice), 40 Code of Federal Regulations (C.F.R.) §§ 22.13(b) and 22.18(b)(2). This Consent Agreement and Final Order (CAFO) is a complete and final settlement of all civil and administrative claims and causes of action for the violations set forth in this CAFO.

II. ALLEGATIONS

Jurisdiction

1. This administrative action is being conducted pursuant to Sections 3008(a) and (g) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA or the Act), and the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 United States Code (U.S.C.) § 6928(a) and (g), and in accordance with the Consolidated Rules of Practice.

2. This CAFO serves as notice that EPA has reason to believe that Respondent violated the Kansas Solid Waste Management Act, Kan. Stat. Ann. § 65-3401 et. seq., and the implementing regulations found at Title 28, Article 31 of the Kansas Administrative Regulations (hereinafter

*In the matter of Mires Tool Company, Inc.
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K.A.R. 28-31), and section 3002 of RCRA, 42 U.S.C. § 6922, and the implementing regulations at 40 C.F.R. Part 262.

Parties

3. The Complainant is the Chief of the RCRA Waste Enforcement and Materials Management Branch in the Air and Waste Management Division of EPA, Region 7.
4. The Respondent is Mires Tool Company, Inc., a corporation authorized to conduct business under the laws of Kansas.

Statutory and Regulatory Framework

5. The State of Kansas has been granted authorization to administer and enforce a hazardous waste program pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and the State of Kansas has adopted by reference the federal regulations cited herein at pertinent parts of K.A.R. 28-31. Section 3008 of RCRA, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. When EPA determines that any person has violated or is in violation of any RCRA requirement, EPA may issue an order assessing a civil penalty for any past or current violation and/or require immediate compliance or compliance within a specified time period pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928. In the case of a violation of any RCRA requirement, where such violation occurs in a state which is authorized to implement a hazardous waste program pursuant to Section 3006 of RCRA, EPA shall give notice to the state in which such violation has occurred or is occurring prior to issuing an order. The State of Kansas has been notified of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

6. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes a civil penalty of not more than \$25,000 per day for violations of Subchapter III of RCRA (Hazardous Waste Management). This figure has been adjusted upward for inflation pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, so that penalties of up to \$32,500 per day are authorized for violations of Subchapter III of RCRA that occur between March 15, 2004, and January 12, 2009, and penalties of up to \$37,500 per day are authorized for violations that occur after January 12, 2009.

Factual Background

7. Respondent is a corporation authorized to conduct business in the State of Kansas, and is a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).
8. Respondent, located at 4330 Esthner Street, Wichita, Kansas, offers for sale drill bits, taps, end-mills, reamers, drill bushings, washer sets, dies, and other tooling components. Respondent employs two full time employees at its Wichita facility.

9. As part of its operations, Respondent generates the following waste: spent lacquer thinner (D001, D035, F005).
10. On or about October 6-7, 2009, an EPA representative conducted a compliance evaluation inspection at the Respondent's facility.
11. During the October 2009 inspection, it was observed that approximately one thousand (1,000) containers of paint, adhesives, solvents, flammables, and unknown materials were stored in Respondent's back room area, backroom yard area, main yard area, building two, and 10 x 12 foot storage shed. Respondent explained that the materials had been accumulated and stored on site for at least thirty (30) years.
12. During the October 2009 inspection, the following four spills of unknown liquid were observed: 1) three (3) foot spill of unknown material on concrete ground in the backroom yard area, 2) three (3) foot spill of red unknown material inside the 10 x 12 foot storage shed, 3) one (1) foot spill of unknown yellow liquid on the concrete ground behind the 10 x 12 foot storage shed, and 4) one (1) foot spill of unknown yellow liquid on the soil behind the 10 x 12 foot storage shed.
13. During the October 2009 inspection, Respondent's representative, Mr. Ron Mires, stated that he had disposed of approximately 100 gallons of waste paint at his personal residence within the last eight years. Mr. Mires disposed of the waste paint by burning it.
14. The regulation for determining whether a waste is a solid and/or hazardous waste is set forth at K.A.R. 28-31-4(b), which incorporates by reference the regulations at 40 C.F.R. Part 261. The wastes described in Paragraphs 11-13 above, are "solid wastes" within the meaning of these regulations. These solid wastes are subject to hazardous waste determinations.
15. Based on information gathered during the CBI regarding Respondent's daily operations, it is a conditionally exempt small quantity generator (Kansas small quantity generator) of characteristic hazardous waste and listed hazardous waste. Kansas small quantity generators generate less than 25 kilograms (55 pounds) of hazardous waste per month.
16. On November 25, 2009, the following temporary EPA ID number was issued for Respondent's facility: KSR000509075. Respondent's contractor characterized and disposed of approximately 37,000 pounds of hazardous waste stored at Respondent's facility on November 30, 2009, and December 22-23, 2009. As a result, Respondent was considered an EPA Generator pursuant to Kansas regulations and a Large Quantity Generator (LQG) pursuant to federal regulations in November and December 2009. Kansas EPA generators accumulate 1,000 kilograms or more of hazardous waste per month, or more than 1 kilogram of acutely hazardous waste per month. Federal LQGs accumulate more than 6,000 kilograms of hazardous waste, or more than 1 kilogram of acute hazardous waste per month.

17. Based on information obtained during the inspection, Respondent was issued a Notice of Violation.

Violations

FAILURE TO CONDUCT HAZARDOUS WASTE DETERMINATIONS

18. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 17 above, as if fully set forth herein.

19. Pursuant to 40 C.F.R. § 262.11, and K.A.R. 28-31-4(b), a generator of "solid waste," as that term is defined at 40 C.F.R. § 261.2, is required to determine if the solid waste is a hazardous waste.

20. At the time of the October 2009 inspection, Respondent failed to conduct hazardous waste determinations on the approximately one thousand (1,000) containers of solid waste stored in the back room area, back room yard area, main yard area, building two, and 10 x 12 foot storage shed.

21. At the time of the October 2009 inspection, Respondent failed to conduct hazardous waste determinations on the four (4) spills described in Paragraph 12 above.

22. Respondent's failure to make a hazardous waste determination on the above referenced waste streams is a violation of 40 C.F.R. §262.11 and K.A.R. 28-31-4(b).

FAILURE TO MINIMIZE RELEASES

23. Complainant hereby incorporates the allegations contained in Paragraphs 1 through 17 above, as if fully set forth herein.

24. Pursuant to 40 C.F.R. § 265.31, as incorporated at K.A.R. 28-31-4(g)(1)(A), a LQG is required to maintain and operate its facility in a way to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

25. At the time of the October 2009 inspection, the inspector observed four (4) spills of unknown material on the ground, releases of various chemicals inside the storage shed which does not have secondary containment, and a number of containers in the storage shed that were corroding or open.

26. The inspector observed over 1,000 containers of unknown materials stored in the back room area, back room yard area, main yard area, building two, and 10 x 12 foot storage shed. As

a result of the inspection, over 37,000 pounds of hazardous waste was disposed of at a treatment, storage and disposal facility.

27. During the inspection, Mr. Ron Mires stated that he had disposed of approximately one hundred (100) gallons of waste paint at his personal residence by burning the paint over the last eight (8) years.

28. The observation of spilled, unknown materials on the ground and in the storage shed, storage of materials in corroded and open containers, statement of waste paint burned at a personal residence, and the amount of hazardous waste stored at the Respondent's facility in areas without secondary containment shows that Respondent failed to minimize releases of hazardous wastes or constituents at its facility and Mr. Mires' personal residence.

29. Respondent's failure to maintain and operate a facility in a way to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous constituents into the environment which could threaten human health or the environment is a violation of 40 C.F.R. § 265.31, as incorporated at K.A.R. 28-31-4(g)(1)(A).

III. CONSENT AGREEMENT

30. Respondent and EPA agree to the terms of this CAFO and Respondent agrees to comply with the terms of the Final Order portion of this CAFO.

31. Respondent admits the jurisdictional allegations of this CAFO and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this CAFO set forth below.

32. Respondent neither admits nor denies the factual allegations and legal conclusions set forth in this CAFO.

33. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above, and its right to appeal the proposed Final Order portion of the CAFO.

34. Respondent and Complainant agree to conciliate the matters set forth in this CAFO without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

35. Nothing contained in the Final Order portion of this CAFO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.

36. Respondent certifies that by signing this CAFO that to the best of its knowledge, Respondent's facility is in compliance with all requirements of RCRA, 42 U.S.C. § 6901 *et. seq.* and all regulations promulgated thereunder.

37. Based on Respondent's representations in Paragraph 36 above, this CAFO addresses all civil administrative claims for the RCRA violations identified above. Complainant reserves the right to take any enforcement action with respect to any other violations of RCRA or any other applicable law.

38. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this CAFO and to execute and legally bind Respondent to it.

39. The parties agree that Respondent shall pay a penalty of zero dollars (\$0.00) because it has certified to EPA, under penalty of perjury, that it has an inability to pay any penalty for the violations cited above.

40. Respondent consents to the issuance of this CAFO.

41. Respondent understands that failure to complete the Compliance Actions described in the Final Order within the designated timeframes may, among other things, subject Respondent to civil penalties of up to \$37,500 per day of non-compliance. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day are authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are authorized.

42. Late Payment Provisions: Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the date required. Interest will be assessed at a rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the costs of debt collection including processing and handling costs and attorneys fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid. 31 C.F.R. §§ 901.9(c) and (d).

43. Respondent agrees to immediately cease receipt of hazardous materials that are not necessary for the daily operations at Respondent's business. Respondent agrees to provide a written affidavit within thirty (30) days of the effective date of this CAFO that Respondent has ceased receipt of hazardous materials that are not necessary to perform daily operations at the Respondent's business.

44. This CAFO shall be effective upon the filing of the Final Order by the Regional Hearing Clerk for EPA, Region 7. Unless otherwise stated, all time periods stated herein shall be calculated in calendar days from such date.

45. This CAFO shall remain in full force and effect until Complainant provides Respondent with written notice, in accordance with Paragraph 51 of the Consent Agreement, that all requirements hereunder have been satisfied.

Reservation of Rights

46. Notwithstanding any other provision of this CAFO, EPA reserves the right to enforce the terms of the Final Order portion of this CAFO by initiating a judicial or administrative action under Section 3008 of RCRA, 42 U.S.C. § 6928, and to seek penalties against Respondent in an amount not to exceed \$37,500 per day per violation pursuant to Section 3008(c) and/or Section 3008(g) of RCRA, for each day of non-compliance with the terms of the Final Order, or to seek any other remedy allowed by law. Pursuant to the Civil Monetary Penalties Inflation Adjustment Rule, 40 C.F.R. Part 19, penalties of up to \$32,500 per day are authorized for violations of Subchapter III of RCRA that occur after March 15, 2004, though January 12, 2009. For violations of Subchapter III of RCRA that occur after January 12, 2009, penalties of up to \$37,500 per day are authorized.

47. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and its implementing regulations and to enforce the terms and conditions of this CAFO.

48. Except as expressly provided herein, nothing in this CAFO shall constitute or be construed as a release from any claim (civil or criminal), cause of action, or demand in law or equity by or against any person, firm, partnership, entity, or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

49. Notwithstanding any other provisions of the CAFO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should EPA find that the future handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health and the environment.

50. The headings in this CAFO are for convenience of reference only and shall not affect interpretation of this CAFO.

51. The provisions of this CAFO shall be deemed satisfied upon a written determination by Complainant that Respondent has fully implemented the actions required in the Final Order.

IV. FINAL ORDER

Pursuant to the authority of Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), and according to the terms of this CAFO, IT IS HEREBY ORDERED THAT:

A. Compliance Actions

1. Respondent shall take the following actions within the time periods specified, according to the terms and conditions specified below.
2. **Biennial Report:** Within fourteen (14) days of the effective date of this Order, Respondent shall provide a biennial report to the Kansas Department of Health and Environment (KDHE) at the following address, and a copy to EPA at the address listed in Paragraph 9 below for the hazardous wastes removed from Respondent's facility during the time the facility was an EPA generator:

Linda Prockish
Kansas Department of Health and Environment
Bureau of Waste Management
1000 SW Jackson, Suite 300
Topeka, Kansas 66612.

3. **Documentation:** Within thirty (30) days of the effective date of this Order, Respondent shall provide documentation demonstrating that Respondent has disposed of all hazardous wastes stored at Respondent's facility at the time of EPA's inspection in accordance with the applicable requirements of RCRA and its implementing regulations. Documentation to be provided shall include, but not be limited to, photographs, sworn statements, manifests, packing lists, etc.
4. **Selection of Contractor, Subcontractors, and Project Manager.**
 - a. **Selection of Contractor:** Within fourteen (14) days of the effective date of this CAFO, Respondent shall notify EPA of the name and qualifications of its selected Contractor, subject to EPA approval, to carry out all activities set forth herein. All work performed under this CAFO shall be under the direction and supervision of a professional engineer or geologist with expertise in hazardous waste site characterization and clean-up.
 - b. **Selection of Project Manager:** Within fourteen (14) days of the effective date of this CAFO, Respondent shall notify EPA of the name and qualifications of its selected Project Manager. To the greatest extent possible, Respondent's Project Manager shall be readily available during all work to be performed hereunder. Respondent's Project Manager shall have the authority to act on behalf of Respondent.

c. Notification of Additional Contractors or Subcontractors: Respondent shall notify EPA of the name and qualifications of any other Contractors or Subcontractors retained to perform work under this CAFO at least seven (7) days prior to commencement of such work.

d. Approval/Disapproval of Contractors, Subcontractors, and Project Manager: EPA retains the right to approve or disapprove the selected Contractors, Subcontractors, or Project Manager retained by the Respondent. If EPA disapproves of any Contractors, Subcontractors, or Project Managers, Respondent shall retain a different Contractor, Subcontractor, or Project Manager, and notify EPA of the new Contractor, Subcontractor, or Project Manager's name and qualifications within seven (7) business days following receipt of EPA's disapproval. If EPA still disapproves of the selected Contractor, Subcontractor, or Project Manager, or if Respondent fails to select a new Contractor, Subcontractor, or Project Manager, then EPA reserves the right to perform any or all of the work required by this CAFO and to seek reimbursement of its costs from Respondent pursuant to applicable statutory authorities.

5. Site Characterization Work Plan: Within ninety (90) days of the effective date of this CAFO, Respondent shall submit to EPA's Project Manager identified in Paragraph 9 below, a Site Characterization Work Plan (SCWP) to investigate the extent of contamination in the soils, buildings, shed, and other locations where the wastes identified in Paragraphs 11, 12, and 13 of the Factual Background section above, were stored, burned, and/or where releases of solid and hazardous wastes have or could have occurred. The SCWP shall include provisions for characterization of the Site's geology, including but not limited to the direction of slope of bedrock at the Site based on a review of readily available information. The reviewed information shall include, but not be limited to, applicable information from the following sources: a) the United States Geologic Survey, b) the Kansas Geologic Survey, and c) any data generated from near-by boring logs, stratigraphic columns, and well completion records. Respondent's Site Characterization investigation must include 4330 Esthner Street and Mr. Ron Mires's personal residence (hereinafter collectively referred to as "Site"). The SCWP shall include the following:

a. A Field Sampling Plan;

b. Quality Assurance Project Plan (QAPP). The QAPP shall address quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans" (EPA QA/R-5, EPA/240/B-01/003, March 2001) and "EPA Guidance for Quality Assurance Project Plans" (EPA QA/G-5, EPA/240/R-02/009, December 2002), as well as other such applicable guidance identified by EPA. The QAPP shall describe the proposed sampling procedures that will be employed to ensure that samples are collected and analyzed using EPA-approved protocols. In addition, the QAPP shall describe the number and type of samples to be

collected, the method(s) of collection and analysis, and criteria for determining sampling locations;

c. Health and Safety Plan (HASP) to ensure the safety of the individuals working on the characterization of the Site. The HASP will be implemented during field activities. The HASP shall be consistent with applicable Occupational Safety and Health Administration regulations;

d. Schedule for completion of activities including potential clean-up of any contaminated areas;

e. A diagram of the Site including the business building, residence, and any structures, a narrative explaining why each of the sampling locations was selected, a pictorial description of the locations to be sampled (including a background sample), how each sample will be collected, and the materials or media to be sampled;

f. A list of the hazardous constituents which will be analyzed for each sample collected, based on the composition of the chemicals sent for disposal and any remaining chemicals that are stored at the Site;

g. The proposed action levels (i.e., Regional Screening Levels for chemical contaminants at Superfund sites) for the hazardous constituents described in Paragraph 5(f) above. The purpose of the proposed action levels are to indicate whether contamination from hazardous wastes stored at the Respondent's Site is present in the air, soil, surface water, groundwater, or building floors, walls, and/or sheds.

6. EPA will review and approve, disapprove, or require modification of the SCWP as set forth in Paragraph 8 below. Respondent shall carry out all activities required pursuant to the EPA-approved SCWP in accordance with the schedules contained therein. Failure to timely complete activities shall be a violation of this CAFO. Within sixty (60) days of Respondent's completion of the field work, Respondent shall provide a Site Characterization Report described in Paragraph 11 below to EPA's Project Manager identified in Paragraph 9 below.

7. Additional Work: As a result of the findings documented in the Site Characterization Report and Clean-Up Work Plan, EPA may determine that certain additional tasks are necessary to achieve the purpose of this Order. These include, but are not limited to: expanded investigatory sampling of the air, soil, surface water, groundwater, building floors, building walls and/or sheds to determine the nature and extent of contamination; excavation and disposal of contaminated materials; or other activities as determined necessary. In the event such a determination is made, EPA will notify Respondent in writing that Respondent must perform the additional work and will specify the basis and reasons for its determination that the additional work is necessary. Within fifteen (15) days of the receipt of such request, Respondent may request a meeting with EPA to discuss the additional work. Within ninety (90) days of

notification of the need for additional work, or according to an alternative schedule agreed to by the parties, Respondent shall submit a work plan for such additional work to EPA. The plan will be reviewed by EPA in accordance with the procedures set forth herein. Upon approval by EPA, Respondent shall perform the additional work according to the EPA-approved plan. The EPA-approved plan shall be incorporated into and become an enforceable part of this CAFO. All additional work performed by Respondent under this subparagraph shall be performed in a manner consistent with this CAFO.

8. Work Plan and Report Approval: All work plans and reports submitted pursuant to this CAFO shall be reviewed in accordance with the procedures outlined in this paragraph. EPA will review the plan and may approve the plan, approve the plan with modifications, or disapprove the plan and provide comments to Respondent. If the plan is disapproved with comments, Respondent shall incorporate EPA's comments and resubmit the plan within thirty (30) days of receipt of EPA's comments. If Respondent fails to revise the plan in accordance with EPA's comments, then EPA may unilaterally modify the work plan or report and Respondent shall implement such work plan or report as necessary to complete the work pursuant to this CAFO. If any work plan is approved either upon initial submission or resubmission, Respondent shall commence implementation of the work plan immediately upon receipt of EPA's written approval of the work plan. Upon approval of any work plan by EPA, that work plan, including all activities and schedules for such activities, shall be incorporated into and made an enforceable part of this CAFO, and failure to implement any work plan in accordance with the schedule contained therein shall be deemed a violation of this CAFO.

9. Submissions: Respondent shall provide three (3) copies of all submissions required under this CAFO to:

Deborah Bredehoff
Environmental Scientist
AWMD/WEMM
U.S. EPA Region 7
901 North 5th Street
Kansas City, Kansas 66101.

10. Split samples: Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent while performing work under this CAFO. Respondent shall notify EPA not less than thirty (30) calendar days in advance of any sample collection activity. In addition, EPA shall have the right to take any additional samples that it deems necessary.

11. Site Characterization Report: The Respondent shall submit a Site Characterization Report that details all activities conducted at the Respondent's Site in conjunction with the site characterization activities required under this CAFO and SCWP within sixty (60) days after completion of site characterization activities. The Site Characterization Report is subject to EPA

approval and disapproval as described in Paragraph 8 above. The report shall include, but not be limited to, the following:

- a. Description of the actions that have been taken to comply with each element of the CAFO and SCWP;
- b. Copies of all results of chemical or physical analyses conducted during this action, including the results of field screening or other "on-site" analyses;
- c. A table documenting the analytical results of each sample collected including a comparison of the analytical results to the approved action levels; and
- d. Recommended actions, based on the analytical results compared to approved action levels, to clean up Respondent's facility.

12. EPA will review and approve, disapprove, or require modification of the Site Characterization Report as set forth in Paragraph 8 above. EPA will evaluate the information provided in the Site Characterization Report to determine whether clean-up activities are required.

13. Clean-Up Work Plan: If it is determined by EPA pursuant to Paragraph 12 above that clean-up activities are required at Respondent's Site, Respondent shall prepare a Clean-Up Work Plan describing how the recommended actions in Paragraph 11(d) will be implemented. The Clean-Up Work Plan shall be submitted within ninety (90) days of EPA's notification to Respondent that clean-up is required. The Clean-Up Work Plan shall include, but not be limited to the following:

- a. A description of the clean-up activities;
- b. A schedule for clean-up activities;
- c. Review the HASP and determine whether it is adequate for the clean-up work to protect workers at the facility;
- d. A requirement for confirmatory sampling consistent with the approved QAPP;
and
- e. Proposed disposal locations.

14. EPA will review and approve, disapprove, or require modification of the Clean-Up Work Plan as set forth in Paragraph 8 above. Upon EPA approval of the Clean-Up Work Plan, Respondent shall implement the actions set forth in the Clean-Up Work Plan immediately in accordance with the schedules contained therein. Failure to timely complete activities shall be a

violation of this CAFO. Respondent shall provide EPA notice fifteen (15) days prior to any field work.

15. Within sixty (60) days of Respondent's completion of the field work, Respondent shall provide a Clean-Up Report described in Paragraph 16 below to EPA's Project Manager identified in Paragraph 9 above.

16. Clean-Up Report: If it is determined that Respondent must perform clean-up actions at the facility pursuant to the Clean-Up Work Plan, the Respondent shall submit a Clean-Up Report that details all activities conducted at the Respondent's facility in conjunction with the clean-up activities required under this CAFO and Clean-Up Work Plan. The Clean-Up Report is subject to EPA approval and disapproval as described in Paragraph 8 above. The report shall include, but not be limited to, the following:

- a. A description of all clean-up activities performed at the Respondent's facility;
- b. A description of the amount of materials properly disposed of at a treatment, storage or disposal facility or landfill, depending on the levels of contamination in the materials;
- c. Copies of all manifests, bills of lading, etc., generated as a result of the clean-up; and
- d. Analytical results of confirmatory samples collected to show all the contamination has been removed above EPA approved clean up levels.

17. All reports prepared pursuant to this CAFO shall include the following certification and signed by a responsible official:

I certify under penalty of law that the information contained in or accompanying this document is true, accurate, and complete. As to the identified portions of this document for which I cannot personally verify the accuracy, I certify that based on my inquiry of the person or persons directly responsible for gathering the information, the information is true, accurate, and complete.

A "responsible official" for purposes of this provision means a president, secretary, treasurer or vice president of the corporation or legal entity, or any person who performs similar policy or decision making functions for the corporation or legal entity.

18. Until ten (10) years after Respondent's receipt of EPA's notification pursuant to Paragraph 51 above of this CAFO, Respondent shall preserve and retain all non-identical copies of records and documents (including those in electronic form) which relate in any manner to the

performance of the work required under this Order. Respondent shall also instruct its contractors and agents to preserve all such documents for a period of ten (10) years.

19. EPA and/or its authorized representatives shall have access to the facility at all reasonable times for the purpose of reviewing the progress of Respondent in carrying out the provisions of this CAFO and for purposes including, but not limited to, inspecting and copying records, collecting samples, and verifying data. Nothing in this CAFO shall restrict EPA's rights under Section 3007 of RCRA, 42 U.S.C. § 6927 or other statutory authority.

20. EPA may modify or revoke this CAFO based upon information discovered during the course of implementation of the CAFO. Any modification shall be incorporated into a revised CAFO and issued to the Respondent in the form of a modified Final Order. The provisions of this CAFO shall remain in full force and effect until all actions required by this CAFO have been completed and EPA has notified the Respondent, in writing, that the actions required by this CAFO have been completed. Respondent shall notify EPA in writing at such time as it believes that all such actions have been completed. EPA shall have sole discretion in determining whether or not all such actions have in fact been completed. Failure to complete all activities required hereunder as directed by EPA shall be deemed a violation of this CAFO. EPA's provision of written notice to Respondent pursuant to this paragraph shall not be construed as a waiver of any of EPA's rights to take further enforcement action under RCRA or any other laws.

21. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this CAFO shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

C. Parties Bound

22. The Final Order portion of this CAFO shall apply to and be binding upon Respondent and Respondent's agents, successors and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this CAFO.

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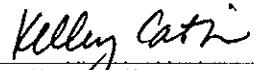
For the Complainant:
The United States Environmental Protection Agency

5-26-10
Date



Donald Toensing
Chief
RCRA Waste Enforcement and Materials Management Branch
Air and Waste Management Division

5/24/10
Date



Kelley Catlin
Assistant Regional Counsel
Office of Regional Counsel

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For Respondent:
Mires Tool Company, Inc.

2010-5-20
Date

Ronald L Mires
Signature


Ronald L Mires
Printed Name

President
Title

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IT IS SO ORDERED. This Final Order is effective upon its final entry by the Regional Judicial Officer.

June 9, 2010
Date



Robert Patrick
Regional Judicial Office

IN THE MATTER OF Mires Tool Company, Inc., Respondent
Docket No. RCRA-07-2010-0017

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

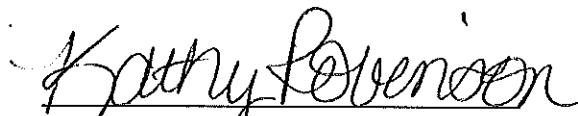
Kelley Catlin
Assistant Regional Counsel
Region 7
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by facsimile and
Certified Mail Return Receipt to:

Ronald L. Mires, President
Mires Tool Company, Inc.
4330 Esthner Street
Wichita, Kansas 67209

Dated:

12/2/10



Kathy Robinson
Hearing Clerk, Region 7